HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 38 (M/S) 2005

1. M/S Uttaranchal Fertilizers & Chemicals,
   Through its Proprietor Sri Pooran Lal Arya,
   S/o Sri Makol Ram Arya, R/o 2/115,
   Devendra Cottage, Ambica Vihar, Amrapali,
   Nainital Road, Bhotia Parao, Haldwani, Nainital,
2. Sri Devendra Kumar Arya,
   S/o Sri Pooran Lal Arya, R/o 2/115,
   Devendra Cottage, Ambica Vihar, Amrapali,
   Nainital Road, Bhotia Parao, Haldwani, Nainital,

----------Petitioner.

Vs.

1. State of Uttaranchal through Secretary,
   In the department of Revenue, Dehradun,
2. District Magistrate, Nainital,
3. Almora Urban Cooperative Bank Ltd.
   Having its Head Office at Lala Bazar, Almora,
   And branch at Meera Marg, Haldwani, (Nainital),
   Through its Branch Manager. ----------Respondents.

Mr. T.A. Khan, learned for the petitioners.
Learned Standing Counsel for respondent nos. 1 & 2.
Sri B.C. Pandey, learned Sr. Counsel assisted by Sri B.D. Pandey, Adv. for respondent no.3.

Hon'ble M.M. Ghildiyal, J.

Heard Sri T.A. Khan, learned counsel for the petitioners, learned Standing Counsel for the State/respondent nos. 1 & 2 and Sri B.C. Pandey, Sr. Advocate assisted by Sri B.D. Pandey, learned counsel for the respondent no.3.

The present writ petition has been filed by the petitioners for the following reliefs:-

a. To issue a writ, order or direction in the nature of certiorari quashing the order dated 02.07.2004 passed

by the respondent no.2 (annexure no.3) in recovery case number 51/41 of 2004.

b. To issue a writ, order or direction in the nature of Prohibition restraining the respondents from making any recovery from the petitioner and also from making any attachment, sale or also from appointing any receiver regarding property of the petitioners.

c. Issue any other order which this Hon'ble Court may deem fit and proper in the circumstances of the case.

d. Cost of the suit may be awarded in favour of the petitioners and against the respondents.

From perusal of the record it transpires that during pendency of this writ petition other writ petitions were filed by another counsel on behalf of the petitioners bearing nos. 1161 (M/B) 2005 and 1162 (M/B) 2005 for the same reliefs. Writ petition no. 1161 (M/B) 2005, which was filed by the owner, also has been dismissed.

Further, from perusal of para-5 of the judgment passed by the Division Beach of this Court in writ petition no.5 (M/B) 2006 it appears that the learned counsel for the petitioners has informed the Court at the time of hearing of the writ petition that a Special Leave Petition was filed against the order dated 18.10.2005 passed in writ petition no. 1161 (M/B) 2005 and writ petition no. 1162 (M/B) 2005 but the same S.L.P. was lateron, withdrawn by the petitioners. Considering the said submission of the petitioners, the Division Bench of this Court in writ petition no.5 (M/B) 2006 has observed that the effect of the withdrawal of the Special Leave Petition is that the order dated 18.10.2005 passed in writ petition no.1161 (M/B) 2005 and writ petition no. 1162 (M/B) 2005 has become final against the

petitioners accordingly the writ petition was dismissed by the Division Bench of this Court on 01.03.2006. The present writ petition, which was filed earlier to the aforesaid writ petitions praying for the similar reliefs, came up for hearing before this Court today.

Having heard learned counsel for the parties and keeping in view the observations made by the Division Bench of this Court in writ petition no.5 (M/B) 2006, I am of the view that the present writ petition has become infructuous.

Accordingly, the writ petition is dismissed being infructuous. However, the petitioners may approach to the appropriate forum for redressal of their grievances. No order as to costs.

(M.M. Ghildiyal, J.)

August 10, 2006:
NCM: